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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/786,725

02/25/2004

Kirk D. Swenson

3896-031736 (P-6004)

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EXAMINER

TOWA, RENE T

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

04/17/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/786,725</p>	<p><b>Applicant(s)</b> SWENSON ET AL.</p>	
	<p><b>Examiner</b> RENE TOWA</p>	<p><b>Art Unit</b> 3736</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Max Hindenburg/  
Supervisory Patent Examiner, Art Unit 3736

Continuation of 3. NOTE: Applicant's newly submitted claim language introduces a new issue, at lines 8-9 of claim 39, which Applicant admits "clarifies that the interface fit between the annular skirt and collar via a groove/protrusion assembly." Moreover, Applicant's newly submitted claim set also introduces new claims 39-41 without cancelling a corresponding number of finally rejected claims; for example, Applicant contends in the instant request that "new claims 39-41 do not introduce new issues that require further search and/or consideration"; however, the Examiner notes that if claim 5 indeed contains the same subject matter as claim 39 as proposed by Applicant, there may be a double patenting issue (i.e. duplicate claims); there may also be a 112, fourth rejection of new dependent claim 40, which depends from claim 39 and appears to be a substantial duplicate, verbatim, of claim 5 also. As such, the Applicant's newly submitted claims do raise new issues that would require further consideration.

Continuation of 11. does NOT place the application in condition for allowance because: In response to the Applicant's request for reconsideration, the Examiner first observes that the Applicant does not appear to claim that the rejection lacks any claimed element or that a claimed element is not known in the art; instead, Applicant's sole argument rest on the the allegation that it would not have been obvious to combine the references in the manner proposed in the Office action. However, the Examiner notes that since Hollister ('842) teaches a holder assembly wherein addition of an annular skirt 76 allows an annular protrusion 18 on a collar 2 to externally mate with a holder housing 72 (see fig. 4; col. 4, lines 26-31; col. 6, lines 67-68; col. 7, lines 1-3), the Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the holder assembly of Hollister ('311) with an annular skirt such that the collar is received between the annular skirt and the receiving port of the holder housing as taught by Hollister ('842) in order to allow an annular protrusion on the collar to externally mate with a holder housing. Similarly, since Hollister ('311) teaches a holder assembly comprising an annular protrusion 16 and a groove 22 for rotatably (i.e. by torque) and frictionally mating the collar 18 against the holder housing 2 such that the safety shield 20 and the collar 18 are axially rotatable with respect to the holder housing 20 about an axis of the holder housing 2 without axial movement of the collar along the axis in order to permit the phlebotomist or nurse to torquably rotate the collar and shield to view the true angle or position of the bevel of the cannula so that the cannula can be more easily and accurately inserted into, for example, the vein of a patient (see col. 1, lines 45-68; col. 2, lines 1-11; col. 3, lines 23-41); as such, the Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the holder assembly of Hollister ('311) with a collar that includes a protrusion or groove for respectively mating with a groove or protrusion on the holder housing as claimed in order to rotatably (i.e. by torque) and frictionally hold the collar against the holder housing such that a phlebotomist or nurse can torquably rotate the collar and shield to view the true angle or position of the bevel of the cannula so that the cannula can be more easily and accurately inserted into, for example, the vein of a patient. Moreover, Applicant does not appear to claim that none of the claimed elements is known in the art; instead, Applicant's sole argument rest on the the allegation that it would not have been obvious to combine the references in the manner proposed in the Office action. In view of the foregoing, the Applicant's request for reconsideration has been considered but fails to place the case in condition for allowance.